Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1978

NO. 78-1626

KURT ROSENBAUM,
Respondent

-vs-

JEAN ROSENBAUM, Petitioner, acting Pro Se

ON APPEAL FROM THE APPELLATE COURT
OF ILLINOIS, FIRST DISTRICT

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

The Petitioner, JEAN ROSENBAUM, Defendant, Counter-Plaintiff, Appellant, acting Pro Se, respectfully appeals for review of certain portions of the Opinion of the Appellate Court of Illinois, First District, Second Division, entered on September 26, 1978. This matter primarily involves the court-ordered partition sale of the family home, with related subsidiary issues, including support and another home.

The Opinion reversed those portions of the decree for partition and sale which apportioned plaintiff's attorney's fees, and Petitioner is no longer required to pay any part of this fee. This issue is NOT under appeal.

The remaining orders of the decree for partition and sale, and of the order of distribution, were affirmed. This portion of the Opinion is presently under appeal before this Court, as well as the denial of subsidiary issues and matters overlooked by the Opinion.

OPINIONS BELOW

This was the second appeal in this case, and had its roots in the Opinion of the first appeal delivered in 1976 by the same Appellate Division (with certain replacements). The Opinion in this second appeal was entered on September 26, 1978, and is reported in Illinois Appellate Court Reports as 65 Ill. App. 3d 228, (Rosenbaum v. Rosenbaum).

Three valid Opinions were entered in the first appeal (a fourth Opinion was invalidated); the first Opinion was entered January 30, 1976, and the last Opinion was entered September 30, 1976. It is reported in Illinois Appellate Reports as 38 Ill. App. 3d 1.

JURISDICTION

This appeal is filed within 90 days. This Court's jurisdiction is invoked under 28 U.S.C. §1257 (2), and 28 U.S.C. §2103.

DOCUMENTS FILED AND ORDERS ENTERED BELOW

The Appellate Opinion in this second appeal was entered September 26, 1978 (App'x, page A-1).

The timely filed Petition for Rehearing was denied on October 24, 1978 (App'x, page A-19).

A timely filed Motion for Reconsideration and Vacation of Order Denying Appellant's Petition for Rehearing was denied on November 14, 1978.

A timely filed Petition for Appeal as a Matter of Right, or in the Alternative, Petition for Leave to Appeal, address i to the Supreme Court of Illinois, was denied on January 25, 1979 (App'x, page A-20).

A timely filed Motion for Reconsideration of Denial of "Petition for Appeal as a Matter of Right, or in the Alternative, Petition for Leave to Appeal," was denied by the Illinois Supreme Court on March 14, 1979.

On April 9, 1979, a timely Notice of Appeal to the Supreme Court of United States was filed with the Appellate Court of Illinois, First District, which possesses the Record on Appeal.

On April 9, 1979, a timely filed Notice of

Appeal was mailed to the Supreme Court of Illinois in Springfield, Illinois for filing, this made necessary by common Illinois practice. (App'x, page A-22).

GROUNDS AND LAW SUSTAINING JURISDICTION

The jurisdiction of this Court is initially invoked under 28 U.S.C. §1257 (2). Petitioner has challenged the validity of specified Illinois statutes as being repugnant to the U. S. Constitution, and claims the Illinois Court decisions in this case have favored their validity either expressly, or by a refusal to rule on the statutory issues, as well as others, and the Federal issues. Cases to sustain jurisdiction under this premise are --

Grannis v. Ordean (1914), 234 US 385, 392
Lathrop v. Donohue (1961), 367 US 820, 824
Lawrence v. State Tax Comm. (1932), 286 US 276, 282-283
Williams v. Brufty (1877), 96 US 176, 183

Additionally, this Court's consideration and jurisdiction of any other denial of Federal right, whether or not capable

in itself of being brought here by appeal, is invoked under --

Cox Broadcasting Corp. v. Cohn (1974), 420 US 469, 487
Prudential Ins. Co. v. Cheek (1922), 259 US 530, 547

In addition, "Where non-Federal issues are interwoven with the Federal issues so as not to be independent, jurisdiction of this Court attaches"; these issues are also under appeal:

Creswill v. Knights of Pythias (1912), 225 US 246, 261
Enterprise Irrigation Dist. et al v. Canal Co. et al (1917), 243 US 157, 164
Kansas City Southern Ry. Co. v. Albers Commission Co. (1912), 223 US 573, 591

The jurisdiction of this Court is invoked, only if deemed necessary, under 28 U.S.C. §2103. Sustaining cases are:

Anonymous v. Baker (1959), 360 US 287, 290
Garrity et al v. New Jersey (1966), 385 US 493, 496
Slagle v. Ohio (1961), 366 US 259, 264

RAISING THE FEDERAL QUESTION

The Federal questions were timely and properly raised, and can be found at all the levels of Court procedure; just some of these instances raised under the U. S. Constitution, and their references in the Record are: (page numbers starting with "C" are trial court.)

Issue: SUPPORT WITHOUT SEPARATE MAINTENANCE.

Article I, Section 10 (R. C-384)
Amendment XIV (C-384)
Amendment V (C-384)
Amendment IX (C-384)
Amendment X (C-384)
Amendment XIV (C-384; Vol. IV, 44-1498, C-45, C-92); Supreme Court Petition, p. 26.

Issue: RETROACTIVE TEMPORARY ALIMONY

Amendment XIV, (R. C-357)

Issue: WIFE AND MOTHER HAS RIGHT TO RETAIN PLACE IN FAMILY

Amendment IX (C-579)

Issue: DOWER IMPROPERLY WITHDRAWN FROM 1948 MARRIAGE CONTRACT
Article I, Section 10; App. Brief, p. 37
Reply Brief, p. 18
Amendment IX ; App. Brief, p. 39

Issue: PARTITION

1. Special Equities
Amendment XIV, (C-701)

2. Proper Determination of Credits
Amendment XIV; Amendment IX (C-871)

3. Right to Accept Higher Private Offer
Amendment IX (C-872)

4. Propriety of Issuance of Writ of Restitution
Amendment XIV; 77-1498 Vol. IV, (C-5)

Issue: NO TRIAL, etc.
Amendment XIV; App., Reply Brief, p. 11
Petition for Rehearing, p. 3

Issue: IMPROPER ADJUDICATION OF OTHER PROPERTY

Amendment XIV; App. Reply Brief, p. 16
Petition for Rehearing, p. 6

Issue: HOMESTEAD
Article I, Sec. 10; App. Reply Brief, p. 17
Amendment XIV, Supreme Court Petition, p. 26

Issue: RESPONDENT IMPROPERLY REIMBURSED FOR TAXES
Amendment XIV, App. Reply Brief, p. 20

In the Illinois Supreme Court Petition for Leave to Appeal, and later in the Motion for Reconsideration, under the U. S. Constitution, Amendment XIV, the following issues were covered: pages 13, 14, 15 (appeal 77-836 improperly dismissed, prejudice of court, denied right to file Appellate motions); page 17 (partition improperly affirmed); page 21 (liability insurance policy not allowed for supersedeas as Illinois law requires); page 23 (Sheriff refused to delay forcible eviction, although Petitioner awaited Illinois Supreme Court Order on supersedeas; page 28 (the Lis Pendens issue); page 35 (Petitioner not equally protected for damage from purchaser), etc.

Additionally, the new 1970 Illinois Constitution is predicated on, and closely resembles, the U. S. Constitution, and was often cited.

All Federal issues appeared to be ignored.

NATURE OF PROCEEDING

Respondent and Petitioner are man and wife, but live apart at Respondent's wish. They have three grown children, and there is no legal separation or divorce.

Respondent sued for partition of the family home, in which Petitioner resided, under the Partition Act, Illinois Revised Stats. (1975) Ch. 106.

The roots of this second appeal are in the Opinion of the first appeal, which declared the trial court partition judgment invalid, and remanded the case for proceedings not inconsistent with the Opinion. The Second Amended Complaint from which the first judgment stemmed was NOT signed by Respondent. No new trial was ordered by Appellate Court. Petitioner asked trial court to dismiss the action, but it declined, and ordered a new trial on its own initiative. Petitioner, who had an attorney in the first case, then discovered that although a lengthy divorce trial had ensued, no partition trial had taken place -- only preliminary hearings.

The Appellate Opinion, therefore, had been entered in error on the partition issue, and the matter took on a new aspect. Petitioner now asked for a mistrial, and again trial court refused. It decreed the family home sold, and no new home was provided for Petitioner.

The purchaser was not properly before the Court, nor has title ever been conveyed, but the Court entered a Writ of Restitution. (Petitioner still possesses the title paper.) Petitioner was then forcibly evicted from the premises (all possessions thrown out on the street) as she awaited an Illinois Supreme Court Order in her attempt to iron out the supersedeas issue. All Court actions still stemmed from the identical, unsigned Second Amended Complaint for Partition, (R.C-83,84).

Trial court denied every related issue entered by Petitioner in this cause. It refused payment to her of back-temporary alimony ($25.00 weekly) after dismissing the divorce as the Appellate Opinion required.

It also consolidated Case No. 76 CH 7448 with the older matter; this was a Complaint for Support (without Separate Maintenance) filed after dismissal of the divorce, and the consolidation was over Petitioner's objections, for the convenience of Respondent. Trial court then refused a change of venue, requested after its manifestation of considerable prejudice.

The Opinion in the second appeal clearly rules a joint-tenant owner is required to pay one-half of the property taxes, and then affirms the trial court ruling that repays to Respondent ALL* property taxes on the family home retroactive to the date of his departure. (He had been emotionally ill due to Urban Renewal destruction in his business area.)

Appellate Court denied the Petition for Rehearing, and the aforedescribed inconsistency in its Opinion has been published and still stands uncorrected. Other closely related issues are also in this case.

*The taxes amount to over $10,000.00.

VALIDITY OF STATE STATUTES QUESTIONED UNDER THE UNITED STATES CONSTITUTION.

The validity of the following portions of Illinois statutes is questioned under the United States Constitution:

1. Separate Maintenance of Husband and Wife, Illinois Revised Stats. (1975), Ch. 68, Par. 23.2.

"The process, practice and proceedings under this act shall be the same as is provided for in "An act to revise the law in relation to divorce", approved March 10, 1874, as amended. Added by act approved July 15, 1955."

The Divorce Act, Illinois Revised Stats. (1975), Ch. 40, Par 13 (applicable to the foregoing Separate Maintenance Act and clause) reads:

"13....The court may restrain or enjoin either spouse from in any manner interposing any restraint upon the personal liberty of, or from harming, interfering with or molesting the other spouse during the pendency of the suit....."

The effect of filing for Separate Maintenance, then, to fulfill a legal right to support, is to oust oneself from the life of the other spouse legally. The Divorce Act, in Par. 14, also permits Court control over the children.

The marriage, separate maintenance and divorce laws in Illinois have since been re-written, but the old Acts still apply to the instant matter, as it was under appeal when the new Act became effective. The new Act is virtually the same in these respects, but clearly labels Separate Maintenance as "legal separation." *

2. Dower, Illinois Revised Stats. (1975), Ch. 3, Par. 2-9 (Amended eff. 1/1/72):

"There is no estate of dower or courtesy. All inchoate rights to elect to take dower existing on the effective date of this amendatory act are hereby extinguished."

To apply the foregoing statute to a 1948 marriage contract is repugnant to the U. S. Constitution, Article I, Section 10; Amendment IV; Amendment XIV, Section 1, ... Petitioner states.

*This old Separate Maintenance Act still affects many individuals.

3. STAY OF JUDGMENTS PENDING APPEAL.

Illinois Revised Stats. (1975), Ch. 110-A, Par. 305:

"(a) Stay of Enforcement of Judgments for Money Only.

(1) An appeal stays the enforcement of a judgment for money only if a notice of appeal is filed within 30 days after the entry of the judgment appealed from and a bond in a reasonable amount to secure the appellee is presented, approved, and filed within the same 30 days or within any extension of time granted under subparagraph (2) of this paragraph. Notice of the presentment of the bond shall be given to the appellee.

(PARAGRAPHS (a-2) (b-1, b-2, b-4, b-5, c, NOT SET FORTH; THEY ARE NOT PERTINENT TO ISSUE)

(d) Condition of the Bond. If an appeal is from a judgment for money, the condition of the bond shall be for the prosecution of the appeal and the payment of the judgment, interest, damages, and costs in the case the judgment is affirmed or the appeal dismissed, except that the bond of an executor or an administrator shall be conditioned upon payment in due course of administration and that the bond of a guardian or conservator shall be conditioned on payment as he has funds therefor. In all other cases, the condition shall be fixed with reference to the character of the judgment.

(e) Approval of Security by Clerk. A court or judge may by order authorize the clerk to approve the security upon the bond.

(PARAGRAPHS (f), (g) and (i) NOT SET FORTH, AS THEY ARE NOT PERTINENT TO THE ISSUE.)

(h) Insurance Policy as Bond. The filing of an insurance policy pursuant to section 392.1 of the Illinois Insurance Code (Ill. Rev. Stat. 1969, Ch. 73, Par. 1004.1) shall be considered the filing of a bond for purposes of this rule."

QUESTIONS PRESENTED

Were the citizen's rights of Petitioner under the U. S. Constitution, and the provisions enumerated below, violated by the decisions of all Illinois Courts?

1. Did trial court upon remand properly fulfill the intent of the Appellate Opinion and Illinois law, when decreeing a new partition trial, and entering the partition judgment? AMENDMENT XIV.

2. (a) Is the decree for partition and sale, and order of distribution, supported by the record and consistent with the law? AMEND. XIV.

(b) Does the partition judgment violate Petitioner's legal family rights, and her other rights? ARTICLE I, SECTION 10; AMENDMENT IV; AMENDMENT IX; AMENDMENT X; AMENDMENT XIV.

(c) Was the partition sale and all matters in connection therewith, properly conducted in accordance with legal requirements? AMENDMENT XIV; AMENDMENT IV.

3. Have Petitioner's family rights as wife and mother been improperly ignored in other ways in Illinois Courts? ARTICLE I, SECTION 10; AMENDMENT IV; AMENDMENT IX; AMENDMENT X; AMENDMENT XIV.

Petitioner has been denied support without legal separation (separate maintenance), denied a financial accounting from Respondent of funds half-hers, denied retroactive temporary alimony and restitution upon dismissal of divorce, and has had divorce law applied to her situation, although she is very much married, etc. She was awarded no funds for moving, storage, breakage or rent, and she was denied use of her husband's credit rating when searching for an apartment, etc.

4. Have the Illinois Courts ruled impartially, or has innate prejudice been exhibited toward the cause of Petitioner? AMENDMENT XIV.

Trial court denied a change of venue, denied equal time in which to submit court-ordered documents, adjudicated other property ownership without allowing cross-examination, etc., refused to put required endings on orders, and allowed Petitioner to submit additional property evaluations at her own cost only.

Appellate Court dismissed Appeal 77-836 for one-day late filing, but recognized documents of Respondent filed over one-week late; refused re-entry of issues in 77-836 into new appeals although no adjudication had taken place on the merits; withdrew Petitioner's right to file motions (she could not get a continuance to file her Brief, when she was forcibly evicted and her mother died all within ten days); restricted Petitioner to use of the Record in the Appellate office, but Respondent had no such restriction; refused to clarify the supersedeas issue, etc.

Illinois Supreme Court refused Petitioner's Petition for Appeal, thus refusing to review the obvious defect in the Appellate Opinion, as well as in its own decision in Phillips vs. Phillips (App'x, page A28, 74 Ill. 2d 27.

5. Was the Writ of Restitution properly issued and executed? AMENDMENT IV; AMENDMENT XIV.

6. Was Petitioner's other joint-tenancy property ownership improperly adjudicated in the partition judgment? ARTICLE I, SECTION 10; AMENDMENT IV; AMENDMENT XIV.

The Partition Act, Illinois Rev. Stat. (1975), Ch. 106, only allows specifically described property to be partitioned and adjudicated, and does not authorize decisions on other property. Petitioner was NOT allowed to cross-examine Respondent on this subject, although she was "erased" from all joint-tenancy ownership by the trial judgment. (She has consistently maintained she possessed joint-ownership in the business property owned by her husband, substantiated by a paper which she signed but which cannot be found.)

7. Was the dismissal of 77-836 by Appellate Court improper considering the circumstances, and did that Court improperly refused to consider the issues in a later appeal, when there had been no adjudication on the merits? AMENDMENT IV; AMENDMENT XIV, SECTION 1.

8. Did trial court improperly consolidate Case No. 76 CH 7448 with No. 71 CH 163, and improperly refuse severance? AMENDMENT XIV.

9. Was the refusal of the Illinois higher courts to correct the obvious error in the Appellate Opinion,* and the refusal of the Illinois Supreme Court to correct the confusion in the Phillips' case (supra) a violation of Petitioner's constitutional rights? AMENDMENT IV; AMENDMENT XIV.

*This error has cost Petitioner many days' income and other expense, as she seeks to correct it.

10. Was the Appellate Court determination that the trial court was without jurisdiction to stay enforcement of the Writ of Restitution a violation of Petitioner's rights? AMENDMENT IV; AMENDMENT XIV.

11. Can a 1948, valid marriage contract be impaired by later legislation? AMENDMENT IX; AMENDMENT X; AMENDMENT XIV; ARTICLE I, SECT. 10. (This is with respect to valuable rights, etc.)

12. Was the value of the partitioned home properly established, and was the Commissioner

impartial? AMENDMENT XIV, AMENDMENT IV.

13. Is the refusal of the Illinois Courts to rule on all issues entered in the case by Petitioner a violation of her rights? AMENDMENT XIV.

14. Did the Appellate Court improperly refuse to rule on Petitioner's 5-6 part Motion? (A sixth issue, special equities, was added at a later date, but omitted in the Appellate Opinion.) AMENDMENT XIV.

SUMMARY OF CONSTITUTIONAL VIOLATIONS

ARTICLE I, SECTION 10 (Impairment of Contracts)
AMENDMENT IV (Unreasonable Seizures of Property)
AMENDMENT IX, (Retained Rights)
AMENDMENT X, (Reserved Rights)
AMENDMENT XIV, (Due Process and Equal Protection of Law)

The foregoing are violations of the Federal Constitution, under which this appeal is sought. See Appendix, page A-27, for text and citations.

Also appealed are jurisdiction of Divorce Court over property sale, and the higher court(s) order for repayment of court costs to Respondent, AMENDMENT XIV.

STATEMENT OF THE CASE

(Please see "Federal Questions Raised," page 5, which specifies in what Courts and when the Federal questions were raised. All Federal questions were raised in pleadings.)

Petitioner and Respondent are man and wife, and have been married close to 31 years. They have three natural children now grown; one is married. All have been deeply affected in their development by the unschooled and careless Illinois Court attitudes toward family problems.

Respondent underwent Urban Renewal in his Hyde Park business neighborhood in Chicago, Illinois, a number of years ago, and bordered on a nervous breakdown for a long time. During the attermath he left home. He lost one mental cruelty divorce case against his wife when mental cruelty was first made a divorce ground in Illinois around 1970. His attorney then also represented the Shopping Center where he conducts his optometric practice.

During this period, Petitioner was told by merc acquaintances that "someone wanted her

property and would get it." The later succession of events appeared to bear this threat out.

In 1971, using a new attorney, Respondent filed for partition of the family home in which his wife lived, and later a mental cruelty divorce count was added. Due to carelessness of her attorney and the Court, Petitioner lost the case, and appealed Pro Se. The Appellate Opinion reversed the divorce, and declared the partition judgment invalid, remanding it for further proceedings consistent with the Opinion. No new trial was ordered, and Illinois case law required the partition to be dismissed, Wenham v. Inter. Packing Co., 213 Ill. 397, 401; Nye v. Nye, 411 408, 414. Two consulting attorneys confirmed this. Petitioner later discovered there had not been a partition trial, only preliminary hearings on the partition, and a divorce trial, and has claimed a fraud had been perpetuated on Appellate Court, Hazel-

Atlas Glass Co. v. Hartford Emp. (1944) 322 US 238.

Trial court refused to dismiss the partition, and on its own initiative ordered a new trial, after denying Petitioner's motion for a new trial, if no dismissal was forthcoming. The Court ordered a sale in a Decree for Partition and Sale (R. C691-694), and refused to vacate or alter the judgment (R. C695-712). Petitioner was refused back temporary alimony, restitution, support without separate maintenance, and repayment of water taxes amounting now to several hundred dollars. She was granted only $13.00 in trial costs and denied special equities. The trial judge repeatedly attempted to inflict Separate Maintenance (legal separation) on Petitioner. After the sale, Respondent filed the Sheriff's Report of Sale and Distribution over one week late without penalty. Trial Court refused to alter or vacate this Report, (C806-810); throughout all proceedings it refused to put required endings on orders to qualify them for interlocutory appeal or to define them as final. All supersedeas issues

were referred to Appellate Court. Due to lack of proper identification on Orders and conflicting case law, Petitioner was forced to file four separate appeals at various stages of litigation to protect her rights. On June 2, 1977, Appeal 77-836 was inadvertently filed one-day late; Petitioner had appeared in Court that morning in a last attempt to establish if the Orders were final. The last Order actually was not issued until September 6, 1977, with the exception of the Writ of Restitution matters, which came later.

The Appellate Court dismissed Appeal 77-836 for one-day late filing. Illinois law under dismissal, Illinois Revised Stats., (1975), Ch. 110-A, Rule 273, states no adjudication has been made on the merits of the case if the Court had no jurisdiction. Illinois Revised Stats. (1975) Ch. 110-A, Rule 301 provides only final Orders can be appealed, and interlocutory appeal is not permitted without a required Court

statement, which was refused. Petitioner has claimed that no Appellate jurisdiction existed, as no final Order was contained in Appeal 77-836 and, therefore, no adjudication on the merits had taken place. Thus, the issues could be re-entered into the later appeals upon payment of a new filing fee, but Appellate Court has rejected this argument.

The new purchaser did not file as an interpleader, etc., as required under Illinois Revised Stats. (1975), Ch. 110 in Par. 25, 26, 26.1 and 26.2. He had not entered an appearance when the Writ of Restitution was granted, and was denied the right to enter an appearance retroactively. An Appellate Court Order dated November 2, 1977, denied him appellate standing, and he did not challenge this Order. Under a new Judge, the Court gave Petitioner 20 days to vacate her family home, but the Forcible Entry & Detainer Act, Ill. Rev. Stats. (1977), Ch. 57, Par. 2, is made applicable to the action, and the Act later requires that 30 days notice be given. Petitioner placed a timely Lis Pendens on the property, under which the

the purchaser was bound, Norris v. Ile,(1894) 152 Ill. 190, 199, 202, 203, 205; Stavros v. Karkomi, 39 Ill. App. 3d 113, 124. This required that Petitioner be allowed to finish out her litigation before proceedings on purchaser's part continued. These rights were totally ignored by all Courts.

The Appellate Court set the supersedeas at $60,000.00; Petitioners proceeds of $20,000 were under Court control. The small house in a choice city location sold for $56,000, and the property alone, without a house, is worth about $30,000. Illinois law requires that a liability policy under the Ill. Insurance Code be acceptable as a supersedeas, but Petitioner was refused this privilege, (this document, page 13). Petitioner then filed an Emergency Motion with the Illinois Supreme Court to clarify the supersedeas issue, and as she awaited its Order, the crew of the Cook County Sheriff forcibly broke into the home and

threw all contents out on the streets. Petitioner was waiting in trial court for a continuance, and the Sheriff knew this. His office gave Petitioner 5-days notice over a holiday weekend, and notice was not made by registered mail to best of recollection, Illinois Rev. Stats. (1977), Ch. 57, Par. 3. Other legal infractions took place; locks on the home's door were changed, and although Petitioner received a time-extension, the purchaser refused possession, and retained certain personal belongings. Trial Court later refused to require their return, as the law requires.

Petitioner's mother died suddenly within 10 days afterwards and the weather had turned to stormy sub-zero, but Petitioner was unable to file a motion asking for a continuance in which to file her Brief, shortly due, this privilege having been taken away by Appellate Court. A letter she wrote to the Judges did not bring forth a response. Her Brief is not fully adequate, as she was also not allowed to remove the

Record from Appellate offices, although Respondent was not so restricted.

Petitioner became severely ill in 1976 during the first appeal, and lost the hearing of one ear, and has other ailments. She was forced to search for housing, visit the storage company and handle the new problems in stormy, bitterly cold weather when transportation was poor. Her husband refused her the family car on the milder days for these purposes. Although her funds were meagre, she was given no financial award for storage, moving, motel, food, security deposit, transportation, etc. to meet the new burdens. She lives off her own earned income and a recent inheritance. The Illinois Courts have consistently refused her support, and have at the same time allowed Respondent to spend their joint and family assets on other women, his social pleasures and vacations, and his living needs (he paid $20,000 cash for a condominium), as Petitioner lives at the poverty level (all watched by their children).

Petitioner claims her rights under the U. S. Constitution, Article I, Section 10, Amendment IV, Amendment IX, Amendment X, and Amendment XIV (due process of law and equal protection) have been sorely infringed upon.

The trial court judgment also ruled that no other joint-tenancy property was held by the parties (despite their oral agreement at time of marriage that gave Petitioner one-half of all assets in marriage; Respondent had only debts then). Respondent's memory is now poor -- he cannot remember even the approximate birthdays of his children. A paper giving Petitioner a one-half interest in their small share of the 53rd-Woodlawn-Kimbark Shopping Center (for which Federal funding was secured) has disappeared. When she subpoened the Center's corporation records in the first case, her attorney, contrary to her instructions and their agreement, refused to allow her to see them. She still has not seen them.

Petitioner has never agreed to partition, and blackmail-like tactics to prevent her from accepting a private higher offer were used.

Respondent's attorney told her to talk to her husband about the offer, although the same attorney sued her for divorce (representing her husband) because she tried to talk to her husband about family problems!

Based on the foregoing facts and others, Petitioner has claimed "fraud on her marital rights" in this second case.

She has attempted to file a complete partition trial transcript, but the official Court Reporters provided Affidavits for many appearances, claiming they could not find the case in their notes. This has been a frequent occurrence throughout, when either appearances could not be located, or important testimony has been altered.

There is ambiguity in family law in Illinois regarding family home occupancy, which the Illinois Supreme Court refused to clarify when it refused Petitioner's Petition. The lower courts have equated homestead exemption, which is a cash award of $10,000, under Illinois Rev. Stats. (1975)

Ch. 52, Par. 1, with a spouse's right to another home under Husband and Wife, Illinois Rev. Stats. (1975) Ch. 68, Par. 16. On December 4, 1978, the Illinois Supreme Court entered a decision in Phillips v. Phillips, 74 Ill. 2d 27 on the homestead exemption, and ruled the 1965 Amendment to the Homestead Exemption Act no longer permits a cash homestead exemption to cotenants. However, this decision DID NOT make a judgment on the spouse's right to another home under Illinois Rev. Stats (1975) Ch. 68:16, which reads --

"it a spouse is ousted by the other, he or she is entitled to 'another homestead suitable to condition in life of the family.'" This provision appears in the new Illinois Act under Illinois Revised Stats.(1978), Ch. 40, Par. 1016. However, the Supreme Court decision states at the end "the judgment of the appellate court affirming the circuit court is affirmed."

A review of the Appellate case, Phillips vs. Phillips, 56 Ill. App. 3d 276 (1978), a fourth district case, on 280, reveals the conclusion that the 1965 Amendment to Ill. Rev. Stats. (1975),

Ch. 52, Par. 1, abolishes homestead or occupancy rights of one spouse against the interest of the other spouse when the property is held in joint-tenancy. The Homestead (exemption) rights ARE NOT the same as the occupancy rights granted under the Husband and Wife Act, and affirmed in Illinois Rev. Stats. (1978), Ch. 40, Par. 1016, the very recent revision of the Act. Clearly, the Illinois Legislature did not seek to dispel with the occupancy rights of a spouse, but only with the cash homestead exemption award currently in the amount of $10,000, and either a mistake has occurred in the Courts, or a devious method has been used to defraud spouses out of marital rights. Should the Illinois Supreme Court clarify this issue in another case in the future, Petitioner will already have been further damaged, and will have lost her rights under res judicata.

The Court is further reminded that title to the family home had not been, nor has it ever been, conveyed to the purchaser,

Illinois Rev. Stat. (1975), Ch. 106, Par. 67 and she possesses a 1948 marriage contract under which certain rights were bestowed which cannot be impaired, U. S. Constitution, Article I, Section 10. She claims there has been unreasonable seizure of property, Amendment IV, and she has not been accorded proper due process and equal protection of the law, Amendment XIV.

The couple's three children resided with Petitioner from 1965 through 1969, and the last one did not leave home until 1971; one returned for a short while in 1972 (they were frequently away at school during this period). Yet Respondent has been awarded ALL taxes paid (over $10,000) retroactive to 1966, to the detriment of Petitioner's security and financial interest. She believes this a violation of her Constitutional rights under the Federal Constitution, Amendment XIV, and other Amendments cited previously.

The partitioned home had been evaluated by the Commissioner at $47,000; it sold for

$56,000; Petitioner received evaluations as high as $64,500, and the suggested listing price was $68,000, based on today's inflated prices. . . .

THE QUESTIONS ARE SUBSTANTIAL

The United States Constitution, Amendment XIV, requires that every citizen receive due process and equal protection of the laws. Amendment IV disapproves unreasonable seizures of property. Amendments IX and X gives citizens unidentified rights, and Petitioner believes her right to protect herself and her children from the ravages of divorce and/or legal separation falls in this class. Article I forbids the impairment of contracts. It is obvious from the foregoing that Petitioner's Constitutional rights have simply not been recognized properly in the Illinois Courts.

Also, the Illinois Supreme Court has declined review of even an obvious error. This alone is sufficient to qualify this case for review before the Supreme Court of United States under 28 U.S.C. §1257 (2). The other issues also qualify it for review, all exhibiting a violation of Federal principles which are

basic law in this country.

The Opinions in both appeals in this case have been widely published and used in Illinois, and are setting a precedent that can eventually violate the family rights of almost every citizen in this country, and undermine our social structure.

It is essential that the United States Supreme Court review this case so that any possible corrections in law can be made before Petitioner, as well as all citizens, are irreparably damaged. This damage has already occurred to many people, Petitioner and her children included, as well as the Respondent, who appears to be under the influence of other people, and who is not totally well. Waldron v. Waldron, 45 Fed. 315, on 317, ruled -- (1890)

" Marriage is a sacred and important relation. It is the foundation of family life and social happiness, and the family is, in an important sense, the foundation of the state and enlightened countries. This relationship is jealously guarded by the law, and should be revered by all good citizens."

Also, validity of State Statutes is questioned.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction of this Appeal.

Respectfully submitted,

*JEAN ROSENBAUM, Defendant,
Counter-Plaintiff, Appellant,
Petitioner, acting Pro Se

COUNTY OF COOK)
STATE OF ILLINOIS) SS

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn on oath, deposes and states she is the Defendant, Counter-Plaintiff, Appellant, Petitioner, acting Pro Se in the foregoing cause, that she has read and knows the contents of the foregoing Jurisdictional Statement by her subscribed, and the same is true in substance and in fact, as well as all documents attached hereto.

COUNTY OF COOK)
STATE OF ILLINOIS) SS

I, _____, a Notary Public for and in the state and county aforesaid, do hereby certify that the foregoing document was sworn and subscribed to before me by _____ _____ this _____ day of April, 1979.

Notary Public

My commission expires: _____

*NOTE: See copy marked "Notarized" for verification and signatures.

77-991)
77-1303) Consolidated
77-1498)

Second Division
9/26/78

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

KURT ROSENBAUM,
Plaintiff-Appellee

vs.

JEAN ROSENBAUM,
Defendant-Appellant

) Appeal from the
) Circuit Court of
) Cook County
)
) Honorable
) Raymond Drymalski,
) Presiding

MR. JUSTICE BROWN delivered the opinion of the court:

Defendant, Jean Rosenbaum, appeals from a decree of partition and sale of real property, from an order of distribution of the proceeds of that sale, and from an order granting a writ of restitution, which decree and orders were entered by the trial court after remand of the first appeal of this cause (Rosenbaum v. Rosenbaum (1st Dist. 1976), 38 Ill. App. 3d 1, 349 NE 2d 73). Defendant has filed four separate appeals in this court, seeking review of various other orders entered by the trial court after remand. We dismissed case No. 77-836 for failure to file a timely notice of appeal, and consolidated the remaining three cases.

In the first appeal of this cause, we found that plaintiff, Dr. Kurt Rosenbaum, failed

to prove a cause of action for divorce under Count II of his second amended complaint and that the partition judgment entered under Count I was invalid. We held that the partition judgment was invalid since commissioners were not appointed and since the report of a commissioner or commissioners did not precede the trial court's order of sale. As to Count I (partition), we remanded the cause for further proceedings. As to Count II (divorce), we remanded the cause with directions that it be dismissed and judgment be entered in favor of defendant. Rosenbaum v. Rosenbaum (1st Dist. 1976), 38 Ill. App. 3d 1, 349 NE 2d 73.

On December 1, 1976, the trial court dismissed Count II (divorce) and entered judgment thereon in favor of defendant. Further proceedings on Count I (partition) were continued.

A review of the pleadings pertaining to the partition action indicates that no controversy existed between the parties regarding the legal description of the property; their

ownership of the property as joint tenants; the derivation of their title; that the property was improved with a single family residence; and that plaintiff had paid all real estate taxes since 1965. The parties were at issue regarding whether the subject property was the only real estate owned by them, whether the subject property could not be divided without injury to those in interest, and whether defendant was entitled to an award for homestead and dower.

On December 14, 1976, defendant filed a two count complaint against her husband, Dr. Rosenbaum. The first count sought a declaratory judgment "establishing her right" to spousal support without the necessity of filing an action under the Separate Maintenance Act (Ill. Rev. Stat. 1975, ch. 68, par. 22 et seq.) and declaring that Act unconstitutional. The second count requested, among other things, support from Dr. Rosenbaum and an adjudication of property rights. The trial court consolidated this action with Dr. Rosenbaum's partition action.

On January 21, 1977, Mrs. Rosenbaum filed a five-part motion seeking: (1) dismissal of the

partition action; (2) trial costs and attorney's fees; (3) retroactive temporary alimony; (4) payment of water tax; and (5) "restitution" of property sold, of insurance policies in which she was beneficiary, of bank accounts, and of various other property.

On April 18, 1977, the trial court entered an order dismissing defendant's two count complaint, denying her five-part motion, and disposing of various motions theretofore filed by defendant. The order further appointed one commissioner, pursuant to Ill. Rev. Stat. 1975, ch. 106, par. 49, to report to the trial court whether or not the subject property was susceptible of division, and if not susceptible to division, then to appraise and value the subject property.

On April 27, 1977, trial commenced on the partition action. The record indicates that trial continued on dates subsequent to April 27, 1977; however, the record does not reveal those exact dates, and it does not include the transcripts of proceedings of those dates.

Both parties testified at the April 27, 1977 hearing. Under examination as an adverse witness pursuant to Section 60 of the Civil Practice Act (Ill. Rev. Stat. 1975, Ch. 110, par. 60), defendant testified that she and plaintiff owned the subject property. She described the lot and the residence that improved it. She further testified that plaintiff had not resided at home since 1965 and that she had not paid any real estate taxes since 1965. Plaintiff testified that the mortgage was paid and that he paid real estate taxes and insurance since 1965. He further stated that he did not own any other real estate in joint tenancy.

On May 18, 1977, the commissioner filed his report, which stated that the subject property was not susceptible of division without manifest prejudice to the parties. The commissioner appraised its value at $47,000.

On June 23, 1977, the trial court entered a decree for partition and sale. The decree provided, among other things, that the subject property was the only real estate owned in common by the parties; that the defendant is

not entitled to have funds set off to her for homestead; that defendant is not as a matter of law entitled to dower; and that deductions for plaintiff's attorney's fees and for real estate taxes paid by plaintiff shall be made before distribution of 50% of the remaining balance to each party.

On August 4, 1977, the Sheriff of Cook County held a public sale of the subject property. It was sold to the highest bidder for $56,000. On August 23, 1977, the Sheriff's report of sale and distribution was filed with the trial court.

On September 6, 1977, the trial court entered an order approving the Sheriff's report of sale and distribution with modification. This order of distribution provided, among other things, that plaintiff's attorney would receive $3,500 for attorney's fees and that plaintiff would receive $10,692.60 for real estate taxes paid by him from January 1, 1966, to September 6, 1977, before distribution of the remaining balance to each party.

On October 6, 1977, the trial court entered an order which granted a writ of restitution to the purchaser of the subject property and which stayed the writ for 20 days. On October 14, 1977, the trial court entered an order referring the matter of setting the supersedeas and staying enforcement of the writ of restitution to this court. On October 21, 1977, this court stayed enforcement of the writ of restitution until further order of this court. On November 2, 1977, this court entered an order staying the writ of restitution until November 18, 1977, and ordered that the writ may be further stayed thereafter only upon defendant filing a $60,000 bond with the Clerk of this court. On November 15, 22 and 29, 1977, this court entered orders which refused reconsideration of this court's November 2, 1977 order. A Writ of assistance was issued by the Clerk of the Circuit Court of Cook County on November 23, 1977, and defendant was evicted from the subject premises on December 2, 1977. The trial court entered an order that same day (December 2, 1977), staying the writ until December 7, 1977.

Defendant raises the following issues for our review: (1) whether the trial court, on remand, proceeded in conformance with the opinion and mandate of this court; (2) whether the trial court's consolidation of defendant's action against Dr. Rosenbaum with the partition action was proper; (3) whether the trial court erred in denying defendant's five-part motion; (4) whether the decree for partition and sale is a "ficticious judgment" because the second amended complaint was not signed or verified; (5) whether the trial court had subject matter jurisdiction of the partition action; (6) whether the decree for partition and sale and order of distribution are supported by the record and are consistent with the law; and (7) whether the trial court erred in granting the writ of restitution.

We shall not consider the first, second, third, and fourth issues previously stated, since these issues were raised by defendant's motions and petitions and were denied by orders of the trial court and appealed from in case No. 77-836, which appeal was dismissed by

this court for failure to file a timely notice of appeal. Although we could decline to consider the fifth issue for the same reason, we shall consider it since it relates to subject matter jurisdiction.

Defendant contends that jurisdiction of partition actions is limited solely to the Chancery Division of the Circuit Court of Cook County (citing Ill. Rev. Stat. 1975, ch. 106, par.70; General Order Number 1-2 of the Circuit Court of Cook County), and therefore, the Chancery-Divorce Division of the Circuit Court of Cook County was without jurisdiction to hear the partition action. We find this contention to be without merit. "Unlike the previous inferior courts which had only limited jurisdiction, the present Circuit Court of Cook County has original and unlimited jurisdiction. (In re Estate of Marcucci, 5 Ill. App. 3d 484, 494, 285 N. E. 2d 141, 147.) "Jurisdiction," the court there stated, "is vested in a court, not in a judge." A similar logic should be applied to the divisions and departments of the circuit

court of Cook County." Haas v. Pick Galleries, Inc. (1st Dist. 1973), 12 Ill. App. 3d 865, 868, 299 NE 2d 93; see Seniuta v. Seniuta (1st Dist. 1977), 49 Ill. App. 3d 329, 364 NE 2d 327.

The sixth issue raised by defendant is whether the decree for partition and sale and order of distribution are supported by the record and are consistent with law.

Defendant first claims that the trial court erred in finding in the decree for partition and sale that the subject property was the only real estate owned in common by the parties. No proof was offered to rebut or contradict plaintiff's testimony that the subject property was the only real estate he owned in joint tenancy. Since this testimony was not contradicted, we find that the trial court did not err in finding that the subject property was the only real estate owned in common by the parties.

Defendant next contends that the decree for partition and sale should be "voided" since plaintiff failed to provide her with

another residence (Ill. Rev. Stat. 1975, ch. 68, par. 16) and since the trial court refused to award her a homestead award of $10,000 with which to find another home (Ill. Rev. Stat. 1975, ch. 52, par. 1). Section 16 of "An Act *** in relation to husband and wife" (Ill. Rev. Stat.1975, ch. 68, par. 16) states that neither the husband nor wife can remove the other from their "homestead" without providing "another homestead suitable to the condition in life of the family." Section 1 of "An Act to exempt the homestead *** " (Ill. Rev. Stat. 1975, ch. 52, par.1) states that "every householder having a family" has a homestead of a value of $10,000. The 1965 amendment to Section 1 states: "This section is not applicable as between joint tenants or tenants in common but it is applicable as to any creditors of such persons."

We find that the two statutory provisions in question must be considered together and that the amendment to Section 1 is dispositive of defendant's contention. Defendant's homestead or

occupancy rights were abolished by the amendment since the subject property was held by the parties in joint tenancy. We hold that the trial court did not err in finding in the decree for partition and sale that the defendant is not entitled to have funds setoff to her for homestead. See Phillips v. Phillips (4th Dist. 1978), 56 Ill. App. 3d 276, 372 NE 2d 98, leave to appeal granted May 26, 1978; see also Berg v. Berg (2nd Dist. 1977), 45 Ill. App. 3d 422, 359 NE 2d 892; Cf. Anderson v. Anderson (1st Dist. 1976), 42 Ill. App. 3d 781, 356 NE 2d 788, and Anderson v. Anderson (1st Dist.1978), 62 Ill. App. 3d 468, 378 NE 2d 1079 (Docket No. 77-1407, filed May 24, 1978), wherein the court, in allowing a homestead award in a partition action, considered Sections 16, (Ill. Rev. Stat. 1973, ch. 68, par. 16) and 1 (Ill. Rev. Stat. 1975, ch. 52, par. 1), but did not consider the amendment to Section 1.

Defendant next contends that the trial

court "overstepped its authority" by finding in the decree for partition and sale that she is not as a matter of law entitled to dower. In Laterza v. Murray (1954), 2 Ill. 2d 219, 222, 117 NE 2d 779, our supreme court stated: "It is well settled that dower is not an incident to joint tenancy, and the wife has no such right in the husband's undivided one-half interest, even though the joint tenancy is terminated by conveyance of such interest. (Johnson v. Muntz, 364 Ill. 482.)" We find that the trial court did not err in denying defendant an award for dower.

Defendant next contends that the trial court erred in allowing a setoff to plaintiff for all real estate taxes paid by plaintiff from January 1, 1966, through September 6, 1977, the date of the order of distribution. We disagree. Defendant has admitted in her pleadings and the uncontradicted evidence is that plaintiff paid all real estate taxes assessed against the property since 1965. As a joint tenant, defendant was responsible for one-half of the expense. Since plaintiff paid the taxes each party was

obligated to pay, he was entitled to a set-off for the full amount he paid, before the balance was divided equally between the parties. Anderson v. Anderson (1st Dist. 1978), 62 Ill.App. 3d 468, 378 NE 2d 1079 (Docket No. 77-1407, filed May 24, 1978); Gilmore v. Gilmore (1st Dist. 1975), 28 Ill. App. 3d 36, 328 NE 2d 562; Kratzer v. Kratzer (4th Dist. 1971), 130 Ill. App. 2d 762, 266 NE 2d 419.

Defendant next contends that the trial court improperly apportioned plaintiff's attorney's fees from the sale proceeds of the subject property. Section 68 of the Partition Act (Ill. Rev. Stat. 1975, ch. 106, par.68) provides for such apportionment to plaintiff's attorney, unless the defendant has interposed "a good and substantial defense" to the complaint.

"The phrase 'a good and substantial defense' is not synonymous with a successful defense. A substantial defense made in good faith is sufficient to preclude the payment of attorney's fees. (Citation.) *** " Anderson v. Anderson (1st Dist. 1978), 62 Ill. App. 3d 468, 378 NE 2d 1079, (Docket No. 77-1407, filed May 24, 1978).

We find that defendant did present a substantial defense and therefor attorney's fees should not be apportioned.

Defendant next contends that the commissioner was a constitutionally impermissible fee officer. This contention is without merit. Anderson v. Anderson (1st Dist. 1976), 42 Ill. App. 3d 781, 785-6, 356 NE 2d 788.

The final issue raised by defendant is whether the trial court erred in granting the writ of restitution.

We initially note that the purchaser of the subject property sought a writ of restitution to obtain possession of the subject property, while the remedy that is traditionally sought to obtain possession subsequent to a judicial partition sale is a writ of assistance. We find that no prejudice resulted to defendant since the office of a writ of restitution and a writ of assistance is to place possession of realty in the hands of the party to whom it rightfully belongs and since we emphasize substance over form. Furthermore, the Clerk of the Circuit Court of Cook County properly interlined

preted the trial court's order of October 6, 1977, as directing it to issue a writ of assistance to the Sheriff of Cook County.

"In Illinois practice a writ of assistance is a process issuing out of chancery to effect the transfer of property as an aid to the enforcement of an order or decree which has determined the rights of litigants to the title or possession of realty. (Citation.) A writ of assistance is a summary proceeding and is not the institution of a new suit; rather it is auxiliary or incidental to judgment or decree, and employed to enforce or effectuate such judgment. (Citation.) On an inquiry with respect to whether the writ should issue, questions determined in the main proceedings cannot be raised again or relitigated. (Citation.) The only issues in the proceeding are the right to possession of the property involved as determined under the decree and whether the person against whom it is asked, if not a party to the suit, came into possession pendente lite under one of the parties.

(Citation.)" City of Chicago v. Walker (1st Dist. 1978), 61 Ill. App. 3d 1050, 1053, 377 NE 2d 1214, 1217.

After a review of the record, we find no prejudice resulting to defendant nor any error arising from the trial court's order granting the writ and the Sheriff's execution thereof. We further find that the trial court was without jurisdiction to grant a stay of the writ from December 2, 1977, to December 7, 1977, as we had previously ruled regarding a stay on November 2, 1977.

We have reviewed all other orders appealed from in this consolidated case (Nos. 77-991, 77-1303, 77-1498), and find no prejudice resulting to defendant nor any error arising from those orders.

Those portions of the decree for partition and sale and of the order of distribution which apportion plaintiff's attorney's fees are reversed, and the cause is remanded with directions to recalculate the distribution to reflect this disposition. The remaining portions of the decree and order of distri-

bution are affirmed. All other orders appealed from are affirmed.

Affirmed in part; reversed in part; and remanded.

STAMOS, P. J., and DOWNING, J., concur.

ILLINOIS APPELLATE COURT

FIRST DISTRICT

KURT ROSENBAUM, Plaintiff-Appellee vs. JEAN ROSENBAUM, Defendant-Appellant	)	Nos. 77-991, 77-1303, & 77-1498 (Consolidation)

O R D E R

Appellant's Petition for Rehearing is hereby denied.

JOHN J. STAMOS,
Presiding Justice

ROBERT J. DOWNING,
Justice

L. SHELDON BROWN,
Justice

DATED: October 24, 1978

(Filed October 24, 1978)
Appellate Court

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
SUPREME COURT) ss

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eighth day of January, in the year of our Lord, one thousand and seventy-nine, within and for the State of Illinois.

Present: Joseph H. Goldenhersh, Chief Justice

Justice Robert C. Underwood Justice Daniel P. Ward
Justice Howard C. Ryan Justice Wm. G. Clark
Justice Thomas J. Moran Justice Thomas E. Kluczynsky
William J. Scott, Attorney General
Louie F. Dean, Marshal
Attest: Clell L. Woods, Clerk

BE IT REMEMBERED that, to-wit: on the 25th day of January, 1979, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

KURT ROSENBAUM,	)	Petition for Leave to Appeal
Respondent	)	from Appellate Court, First
-vs-	)	District
JEAN ROSENBAUM,	)	77-991
Petitioner	)	77-1303
	)	77-1498
No. 51429	)	71 CH 163
	)	76 CH 7448

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and now being fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioner costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 25th day of January, 1979.

(S E A L) /s/ Clell L. Woods, Clerk

Supreme Court of the State of Illinois

NO. 51429
IN THE SUPREME COURT OF ILLINOIS

KURT ROSENBAUM, Plaintiff, Counter-Defendant, Appellee, Respondent	) On Petition for Appeal as a Matter of Right, or in the Alternative, on Petition for Leave to Appeal from the Appellate Court of Illinois, First District, There Heard on Appeal from the Circuit
-vs-	) Court of Cook County, Illinois, Illinois County Department, Divorce Division
JEAN ROSENBAUM, Defendant, Counter-Plaintiff, Appellant, Petitioner, acting Pro Se	) Hon. Raymond Drymalski, Trial Judge Presiding) Consolidation of Appellate Nos. 77-991, 77-1303, 77-1498 (77-836 Dismissed)) Second Division Presiding) First Appeal No. 60327

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the above-named JEAN ROSENBAUM, Defendant, Counter-Plaintiff, Appellant, Petitioner, acting Pro Se, herein appeals to the Supreme Court of the United States from all portions of the final judgment of the Appellate Court of Illinois, First District, Second Division, entered on September 26, 1978, with the exception of that portion decreeing Appellant is NOT required to pay any part of the legal fees of Appellee's attorney. (Nor is the

judgment of Appellate Court in the first appeal involved in this present appeal, except as the partition judgment contained therein relates to the partition issue in this instant appeal.)

The Supreme Court of Illinois refused Petitioner's PETITION FOR APPEAL AS A MATTER OF RIGHT, OR IN THE ALTERNATIVE, PETITION FOR LEAVE TO APPEAL, on January 25, 1979, and on March 14, 1979, denied her MOTION FOR RECONSIDERATION of the denial of the PETITION.

The primary portions of the Appellate judgment in this second appeal for which review is requested include, but are not limited to, the dismissal of Appeal 77-836 for one-day late filing, the supersedeas issue in all aspects, whether the decree for partition and sale and order of distribution are supported by the record and are consistent with the law (denial of another residence and dower rights to Petitioner, set-off to Respondent for ALL real estate taxes, amounting to $10, 692.60, retroactive to January, 1966, adjudication of other property rights besides the partitioned home, etc.), whether the trial court erred in

granting the writ of restitution, the legal propriety of the Sheriff's execution of the writ of restitution, etc.

This appeal is taken pursuant to 28 U.S.C. §1257 (2), and 28 U.S.C. §2103, and because Petitioner believes her constitutional rights under the following clauses of the United States Constitution have been violated: Article I, Section 10 (Impairment of contracts); Amendment IV (Unreasonable seizures of property); Amendment IX, (Retained rights); Amendment X Reserved rights); Amendment XIV, Section 1 (Due process and equal protection).

Also to be considered a part of this appeal are certain Appellate orders subsidiary to the Illinois Appellate Opinion, denying documents of Petitioner, etc., and other matters, including but not limited to --

1. July 29, 1977. Respondent allowed motion to strike Petitioner's Amended Notice of Appeal over objections, etc. (77-991)

2. October 4, 1977. Petitioner's Lis Pendens Notice striken. (77-836, 77-991, 77-1303)

3. November 2, 1977. Appellate Court set a supersedeas of $60,000, refused support to Petitioner, etc. (77-1498)

4. November 15, 1977. Appellate Court

denied Petitioner's right to provide a liability policy to serve as supersedeas, as Illinois law provides, etc.

5. November 29, 1977. Court withdrawal of Petitioner's right to file motions, petitions or papers, except briefs required. (Accompanied by Appellate Clerk's refusal to accept same.) (77-991, 77-1303, 77-1498)

6. December 1, 1977. Denial of Petitioner's Supplemental Notice of Appeal as to certain designated orders, etc. (77-991, 77-1303)

7. February 7, 1978. Respondent granted leave to file past-due Brief instanter over Petitioner's objections.

8. October 24, 1978. Appellate denial of Petitioner's Petition for Rehearing.

9. Any of the following Appellate Orders which quality: July 19, 1977, August 5, 1977, August 25, 1977, September 13, 1977, September 20, 1977, October 21, 1977, November 15, 1977, November 22, 1977, November 29, 1977, January 18, 1979, July 18, 1978, October 25, 1978, October 31, 1978, November 14, 1978 (3 Orders), March 13, 1979, March 20, 1979, etc. (Only denials under appeal.)

10. All Federal issues, and other qualifying matters subsidiary thereto, submitted to the Illinois Supreme Court in Petitioner's Petition for Leave to Appeal, which it declined to accept and review.

11. All issues and matters that qualify encompassed by Petitioner's Appellate Brief, Reply Brief and Petition for Rehearing, which were either denied or overlooked by the Appellate Opinion.

12. All Federal and other qualifying issues entered in trial court, that are designated in Appeal Nos. 77-836 (Dismissed), 77-991, 77-1303, 77-1498, and the Supplements and Amendments added thereto by Appellant.

13. The issue of wives' rights under the United States Constitution, Amendment IX, and Amendment XIV, Section 1.

JEAN ROSENBAUM, Petitioner,
acting Pro Se

STATE OF ILLINOIS) SS
COUNTY OF C O O K)

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn on oath, deposes and states she is the Petitioner in the foregoing cause, that she has read and knows the contents of the foregoing NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES by her subscribed, and the same is true in substance and in fact.

JEAN ROSENBAUM, Petitioner,
acting Pro Se

Subscribed and sworn to before me, a Notary Public of the County of Cook, State of Illinois, this 9th day of April, 1979.

Notary Public

Jean Rosenbaum, acting Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047

****

PETITIONER'S NOTE: This Notice of Appeal was filed with the Clerk of the Supreme Court of Illinois by mail in a timely fashion, was properly signed and notarized, and accompanied by a Proof of Service, also notarized, attesting that all parties required to be served have been served. It is virtually the same as that filed in the same fashion with the Clerk of the Appellate Court, Chicago, Illinois, which was personally filed.

UNITED STATES CONSTITUTION CLAUSES INVOLVED

Texts

ARTICLE I, Section 10. No state shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. Ill. Rev. Stat. 1977, page 3 .

AMENDMENT IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Ill.Rev.St.Pg.6

AMENDMENT IX. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. Ill. Rev. Stat.1977, page 6 .

AMENDMENT X. The powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Ill. Rev. Stat. 1977, page 6 .

AMENDMENT XIV, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Ill. Rev. Stat. 1977, page 6-7.

CASES ESPECIALLY PERTINENT

Cases especially pertinent to this appeal, which border on being companion cases, are:

1. Phillips vs. Phillips (1978)
   74 Ill. 2d 27

2. Phillips vs. Phillips (1978)
   56 Ill. App. 3d 276, fourth district

3. Rosenbaum v. Rosenbaum (1976)
   65 Ill. App. 3d 228

They have been referred to elsewhere in this document.